

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0200-R

EAB Decision 2024-EAB-0200 Reversed on Reconsideration
Order No. 24-UI-246815 Reversed
Late Request For Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On August 23, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$3,690 in Pandemic Unemployment Assistance (PUA), \$5,400 in Federal Pandemic Unemployment Compensation (FPUC), and \$1,800 in Lost Wages Assistance (LWA) benefits that claimant was required to repay, a \$2,727 monetary penalty, and a 36-week penalty disqualification from future benefits. On September 13, 2021, the August 23, 2021, administrative decision became final without claimant having filed a request for hearing. On May 5, 2022, claimant filed a late request for hearing.¹ ALJ Kangas considered claimant's request, and on January 30, 2024, issued Order No. 24-UI-246815, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 13, 2024. On February 20, 2024, claimant filed an application for review of Order No. 24-UI-246815 with the Employment Appeals Board (EAB). On March 22, 2024, EAB issued EAB Decision 2024-EAB-0200, affirming Order No. 24-UI-246815 by re-dismissing claimant's request for hearing as late without a showing of good cause. On its own motion, EAB has reconsidered EAB Decision 2024-EAB-0200. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

FINDINGS OF FACT: (1) On August 23, 2021, the Department mailed the August 23, 2021, administrative decision to claimant's address on file with the Department. The August 23, 2021, administrative decision stated, "Any appeal from this decision must be filed on or before September 13, 2021, to be timely." Exhibit 1 at 1. Claimant received the administrative decision shortly after it was mailed.

¹ As explained in greater detail below, claimant filed an earlier late request for hearing on November 22, 2021, which was not recognized by the Department as applying to the August 23, 2021, administrative decision.

- (2) The August 23, 2021, administrative decision concluded that claimant was ineligible for PUA benefits for the weeks from May 3 through 9, 2020, May 24 through July 11, 2020, and July 19 through September 26, 2020 (weeks 19-20, 22-20 through 28-20, and 30-20 through 39-20) because he had received remuneration exceeding his weekly benefit amount for those weeks. The decision also concluded that claimant willfully made a misrepresentation and failed to report a material fact to obtain those benefits, and assessed overpayments and a monetary penalty.
- (3) On September 1, 2021, the Department mailed claimant a billing statement which appeared to show that the overpayment assessed in the August 23, 2021, administrative decision had “been paid in full and there [was] no longer a balance due.” Exhibit 2 at 4.
- (4) On September 3, 2021, claimant received an emailed response from the Department to an inquiry about his PUA claim. The email conveyed that claimant’s “PUA claim is correct” and he “will receive all weeks [he is] eligible to receive.” Exhibit 2 at 4.
- (5) Based on this correspondence, claimant believed that an appeal of that decision was no longer necessary. Claimant therefore did not file a request for hearing by the September 13, 2021, deadline.
- (6) On October 1, 2021, and October 6, 2021, the Department mailed billing statements to claimant showing that he owed balances consistent with the overpayments assessed in the August 23, 2021 administrative decision.
- (7) On October 19, 2021, claimant filed a request to waive recovery of the overpayments shown in the billing statements.²
- (8) On November 1, 2021, the Department issued an Amended Notice of Determination for PUA, concluding that claimant was ineligible for PUA benefits effective March 22, 2020, because he was eligible for regular unemployment insurance (regular UI) benefits. The Amended PUA Determination stated that claimant had the right to request a hearing by November 22, 2021, and also stated, “If you previously received benefits you are not entitled to or if you were entitled to a lower amount, you may have an overpayment, which you must pay back. Any decision regarding an overpayment of benefits will be issued in a separate decision.” EAB Exhibit 1 at 2.
- (9) On November 22, 2021, claimant filed a request for hearing which disputed the conclusion that he was ineligible for PUA benefits. The request for hearing was only construed as applying to the November 1, 2021, Amended PUA Determination.
- (10) On May 5, 2022, claimant filed a request for hearing. The filing was construed, in part, as a late request for hearing on the August 23, 2021, administrative decision. Order No. 24-UI-246815, issued on January 30, 2024, dismissed this late request for hearing.

² EAB has taken notice of this fact which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact will remain in the record.

(11) On March 22, 2024, EAB issued EAB Decision 2024-EAB-0200, affirming Order No. 24-UI-246815.

CONCLUSIONS AND REASONS: EAB Decision 2024-EAB-0200 is reversed on reconsideration. Order No. 24-UI-246815 is set aside, claimant’s late request for hearing is allowed, and a hearing on the merits of the August 23, 2021, administrative decision is required.

Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board, upon its own motion, to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” OAR 471-041-0145(1) (May 13, 2019).

EAB Decision 2024-EAB-0200 concluded that claimant failed to show good cause to extend the deadline for filing a request for hearing on the August 23, 2021, administrative decision because the record failed to show why claimant was prevented from timely filing the hearing request. EAB Decision 2024-EAB-0200 at 2. However, as explained in greater detail below, reasonable inferences can be drawn from the record as to the factors that prevented timely filing, whether they constituted good cause to extend the filing deadline, and whether a late request for hearing was filed within a reasonable time after those factors ended. Reconsideration therefore is warranted to correct previous errors of fact or law. Accordingly, on EAB’s own motion, EAB Decision 2024-EAB-0200 is reconsidered and the decision reversed, as explained herein.

Late request for hearing. ORS 657.269 provides that the Department’s decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 provides that the 20-day deadline may be extended a “reasonable time” upon a showing of “good cause.” OAR 471-040-0010 (February 10, 2012) provides that “good cause” includes factors beyond an applicant’s reasonable control or an excusable mistake and defines “reasonable time” as seven days after those factors ceased to exist. OAR 471-040-0005(1) (July 15, 2018) provides, “A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed.”

The request for hearing on the August 23, 2021, administrative decision was due by September 13, 2021. The first request for hearing recognized by the Department was filed by claimant on May 5, 2022, and was therefore late. However, claimant had filed an earlier late request for hearing on the August 23, 2021, administrative decision on November 22, 2021, which the Department failed to recognize as applying to that decision.

Claimant’s written statements regarding his appeal of the August 23, 2021, administrative decision specifically mentioned details of that decision’s contents and that claimant disagreed with its conclusions, but did not suggest that any delay occurred in claimant’s receipt of it. *See* Exhibit 2 at 4. Instead, claimant wrote about two other documents he received from the Department prior to the appeal deadline, suggesting that they were responsible for his failure to timely file a request for hearing. On September 1, 2021, the Department mailed claimant an overpayment billing statement “reflecting activity through 08/31/2021,” and stating that the overpayment had “been paid in full and there is no longer a balance due.” Exhibit 2 at 4. On September 3, 2021, the Department emailed claimant in

response to an inquiry, conveying that claimant's "PUA claim is correct," and that he "will receive all weeks [he is] eligible to receive." Exhibit 2 at 4. It is reasonable to infer from claimant's description of these documents that they led him to mistakenly believe that the overpayment had been cancelled and that he no longer had reason to request a hearing on the August 23, 2021, administrative decision. Because this mistake was caused by conflicting and incorrect information provided by the Department, this was an excusable mistake that prevented timely filing. Therefore, good cause exists to extend the filing deadline.

After the September 13, 2021, filing deadline had passed, claimant received billing statements sent by the Department on October 1, 2021, and October 6, 2021, which suggested that the overpayments assessed in the August 23, 2021 administrative decision had not been cancelled and were considered valid by the Department. Claimant apparently responded to this information by filing a waiver request on October 19, 2021. It is reasonable to infer that claimant continued to be confused about the validity of the August 23, 2021, administrative decision due to the conflicting information he received regarding the overpayment. Additionally, as the August 23, 2021, administrative decision did not explain the right to file a late request for hearing once the filing deadline had passed, it is reasonable to infer that claimant believed that filing the waiver request, rather than a late appeal, was his only recourse regarding the overpayment after he received the October 2021 billing statements. Therefore, the factor that prevented timely filing did not end when claimant received the October 2021 billing statements.

On November 1, 2021, the Department issued the November 1, 2021, Amended PUA Determination, concluding that claimant was ineligible for PUA benefits, including for the same weeks already covered by the August 23, 2021, administrative decision. The November 1, 2021, Amended PUA Determination had a November 22, 2021, deadline to file a request for hearing and stated that any resulting overpayment would be assessed in a separate decision. Claimant filed a timely request for hearing on the November 1, 2021, Amended PUA Determination on November 22, 2021. Because claimant's hearing request expressed a present intent to appeal the conclusion that claimant was ineligible for PUA benefits from March 22, 2020, through the September 4, 2021, end of the PUA program, including the weeks for which the August 23, 2021, administrative decision concluded that claimant was ineligible to receive PUA benefits, the request should also have been construed as a late request for hearing on the August 23, 2021, administrative decision.

The factor that prevented timely filing did not end until November 22, 2021. The November 1, 2021, Amended PUA Determination did not, according to the department's subsequent actions, cancel and replace the August 23, 2021, administrative decision, as would reasonably be expected of an "Amended" eligibility determination. The Department's treatment of both administrative decisions as simultaneously valid despite one purporting to amend the other presumably added to the conflicting information and confusion claimant experienced, and therefore an excusable mistake continued to prevent filing of a request for hearing on the August 23, 2021, administrative decision through the deadline to request a hearing on the November 1, 2021, Amended PUA Determination. Because claimant filed a request for hearing on November 22, 2021, which, pursuant to OAR 471-040-0005(1), qualified as a late request for hearing on the August 23, 2021, administrative decision, it was filed within a "reasonable time" after the factor that prevented timely filing ended. Accordingly, claimant's late request for hearing on the August 23, 2021, administrative decision is allowed, and a hearing on the merits of the August 23, 2021, administrative decision is required.

DECISION: EAB Decision 2024-EAB-0200 is reversed on reconsideration. Order No. 24-UI-246815 is set aside, claimant's late request for hearing is allowed, and the matter remanded for a hearing on the merits of the August 23, 2021, administrative decision.

S. Serres, D. Hettle and A. Steger-Bentz.

DATE of Service: January 9, 2025

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals **within 30 days of the date of service stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-246815 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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